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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

QIN CHEN,

Petitioner,

v.

MICHAEL CHERTOFF, Secretary  
 of Department of Homeland Security;  
 EMILIO T. GONZALEZ, Director of the  
 U.S. Citizenship and Immigration Services;  
 CHRISTINA POULOS, Acting Director of  
 USCIS, California Service Center; and  
 ROBERT S. MULLER, Director  
 of Federal Bureau of Investigation,

Respondents.

No. C 07-2188-WDB

**RESPONDENTS' STATUS REPORT**

CMC Date: April 21, 2008

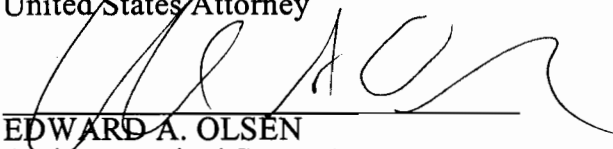
CMC Time: 1:30 p.m.

The respondents wish to inform the Court that the Department of State has issued its Visa Bulletin for May 2008. A copy of the Bulletin is attached to this status report. According to this Bulletin, the cutoff date for second preference Chinese workers is now January 1, 2004. Although the petitioner's priority date is March 11, 2004 and, accordingly, a visa number is still not available to her, the cutoff date of January 1, 2004 in the May 2008 Visa Bulletin is a one-month improvement on the cutoff date in the April 2008 Visa Bulletin (in which the cutoff date for second preference Chinese workers was December 1, 2003).

1 Dated: April 15, 2008

Respectfully submitted,

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# Visa Bulletin

Number 118  
Volume VIII  
Washington, D.C.

## VISA BULLETIN MAY 2008

### A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **May**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by April 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

### FAMILY-SPONSORED PREFERENCES

**First:** Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

**Third:** Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth:** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three

preferences.

## EMPLOYMENT-BASED PREFERENCES

**First:** Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

**Second:** Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

**Third:** Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers".

**Fourth:** Certain Special Immigrants: 7.1% of the worldwide level.

**Fifth:** Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Fam-ily	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPP-INES
1st	08MAR02	08MAR02	08MAR02	08JUL92	15MAR93
2A	08JUN03	08JUN03	08JUN03	01MAY02	08JUN03
2B	01JUN99	01JUN99	01JUN99	01APR92	15FEB97
3rd	08JUN00	08JUN00	08JUN00	22JUL92	01APR91
4th	08AUG97	15JAN97	01JAN97	15DEC94	08MAR86

**\*NOTE:** For May, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 01MAY02. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 01MAY02 and earlier than 08JUN03. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIP-PINES
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01JAN04	01JAN04	C	C
3rd	01MAR06	22MAR03	01NOV01	01JUL02	01MAR06
Other Workers	01JAN03	01JAN03	01JAN03	01JAN03	01JAN03
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

Employment Third Preference Other Workers Category: Section 203(e) of the NACARA, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW cut-off date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002.

## B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. **This reduction has resulted in the DV-2008 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For May, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	26,700	Except: Egypt: 20,500 Ethiopia: 16,000 Nigeria: 11,600
ASIA	10,500	
EUROPE	23,500	
NORTH AMERICA (BAHAMAS)	12	
OCEANIA	1,400	
SOUTH AMERICA, and the CARIBBEAN	1,550	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2008 program ends as of September 30, 2008. DV visas may not be issued to DV-2008 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2008 principals are only entitled to derivative DV status until September 30, 2008. DV visa availability through the very end of FY-2008 cannot be taken for granted. Numbers could be exhausted prior to September 30.

### C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY

**RANK CUT-OFFS WHICH WILL APPLY IN JUNE**

For **June**, immigrant numbers in the DV category are available to qualified DV-2008 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>AFRICA</b>	32,000	Except: Egypt: 22,000 Ethiopia: 17,750 Nigeria: 13,000
<b>ASIA</b>	11,900	
<b>EUROPE</b>	26,000	
<b>NORTH AMERICA (BAHAMAS)</b>	12	
<b>OCEANIA</b>	1,500	
<b>SOUTH AMERICA, and the CARIBBEAN</b>	1,700	

**D. MEXICO F2A VISA AVAILABILITY DURING THE COMING MONTHS**

Continued heavy demand in the Mexico F2A category may require the retrogression of this cut-off date to hold number use within the annual numerical limit. Such action could occur as early as June.

**E. EMPLOYMENT VISA AVAILABILITY**

Many of the Employment cut-off dates have continued to advance more rapidly than might ordinarily be expected. This is a result of consultations with U.S. Citizenship and Immigration Services (USCIS) regarding their pending demand, which is currently using approximately 90% of all Employment numbers. USCIS has indicated that they would prefer to review a substantial number of cases at this time to ensure that number use in the various categories can be maximized. Should USCIS projections of the resulting number use prove to be incorrect it may be necessary to adjust the cut-off dates during the final quarter of FY-2008.

**F. OBTAINING THE MONTHLY VISA BULLETIN**

The Department of State's Bureau of Consular Affairs offers the monthly "Visa Bulletin" on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the Bulletin is:

**<http://travel.state.gov>**

From the home page, select the VISA section which contains the Visa Bulletin.

To be **placed on** the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

**[listserv@calist.state.gov](mailto:listserv@calist.state.gov)**

and in the message body type:

**Subscribe Visa-Bulletin** *First name/Last name*  
(example: *Subscribe Visa-Bulletin Sally Doe*)

To be **removed from** the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

**[listserv@calist.state.gov](mailto:listserv@calist.state.gov)**

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa cut-off dates which can be heard at: (area code 202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

**[VISABULLETIN@STATE.GOV](mailto:VISABULLETIN@STATE.GOV)**

(This address cannot be used to subscribe to the Visa Bulletin.)

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